

## Complaints dealt with by the Communications Authority (“CA”) (released on 17 September 2024)

The CA has considered the following complaint cases –

1. [Television Advertisement for “Vita Green Lingzhi” \(「維特健靈五色靈芝」電視廣告\) broadcast by Television Broadcasts Limited \(“TVB”\)](#)
2. [Television Programme “Phoenix Morning Express” \(鳳凰早班車\) broadcast by Phoenix Satellite Television Company Limited \(“Phoenix TV”\)](#)

The CA also reviewed the decisions of the Director-General of Communications (“DG Com”) on two complaint cases.

Having considered the recommendations of the Broadcast Complaints Committee, the CA decided that –

1. an **advice** should be given to TVB on the complaint against the television advertisement for “Vita Green Lingzhi” (「維特健靈五色靈芝」電視廣告);
2. the complaint against the television programme “Phoenix Morning Express” (鳳凰早班車) was **unsubstantiated**; and
3. the decisions of the DG Com on the complaint cases should be upheld. Details of the cases are set out in the [Appendix](#).

17 September 2024

**Case 1 – Television Advertisement for “Vita Green Lingzhi” (維特健靈五色靈芝) broadcast at 7:31pm, 11 May 2023 on the Jade Channel of Television Broadcasts Limited (TVB)**

A member of the public complained that the captioned advertisement encouraged indiscriminate consumption of medicine through sales promotion and gifts, which was unacceptable for broadcast.

**The Communications Authority (CA)’s Findings**

In line with the established practice, the CA considered the complaint case and the representations of TVB in detail. The CA took into account the relevant aspects of the case, including the following –

*Details of the Case*

- (a) the advertisement under complaint promoted a lingzhi product, which featured the remarks “每朝兩粒” (two capsules every morning) and the caption “需配合均衡飲食” (needs to be combined with a balanced diet”) at the bottom of the screen. The advertisement ended with still images of two boxes of the product concerned together with three other items. The promotional wordings “送” (free) and “買孖裝送” (free offer for buying in twin packs) were superimposed on screen;
- (b) the product concerned was a proprietary Chinese medicine (pCm) registered under the Chinese Medicine Ordinance (Cap. 549); and
- (c) TVB submitted that the product concerned should not be taken as medical preparation because pCm was not covered under the definition of medical preparation in the Generic Code of Practice on Television Advertising Standards (TV Advertising Code). Besides, the advertisement clearly indicated that the product concerned was intended for daily consumption as health supplement instead of medicine for the prevention or treatment of specific disease. Hence, the factual reference to the promotional offer was deemed acceptable.

*Relevant Provisions in the TV Advertising Code<sup>1</sup>*

- (a) paragraph 8 of Chapter 6 – the term “medical preparation” means any kind of medicament or other curative or preventive substance and whether a proprietary medicine, a patent medicine or purported natural remedy;
- (b) paragraph 14 of Chapter 6 – no advertisement may directly or indirectly encourage indiscriminate, unnecessary or excessive use of any medical preparation or treatment; and

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<sup>1</sup> On 15 December 2023, the CA published in the Gazette the revised television and radio codes of practice on programme and advertising standards, which took effect on the same day. The relevant provisions in the TV Advertising Code cited above were in effect at the time the advertisement under complaint was broadcast (i.e. 11 May 2023).

- (c) paragraph 20 of Chapter 6 – no advertisement for a medical preparation or treatment may contain any reference to a prize competition or promotional scheme such as gifts, premium offers and samples.

### **The CA’s Consideration**

The CA, having regard to the relevant facts of the case including the information submitted by TVB, considered that –

- (a) under the TV Advertising Code, the term “proprietary medicine” was generic and broad and could reasonably be understood to cover all Chinese and western proprietary medicine. As such, the CA considered that there were reasonable grounds to take the view that the registered pCm product concerned could be considered as a medical preparation;
- (b) as the product concerned/pCm should fall within the definition of medical preparation under the TV Advertising Code, and TVB admitted that the advertisement contained factual reference to promotional offer of the product concerned, TVB had clearly breached paragraph 20 of Chapter 6 of the TV Advertising Code; and
- (c) since the advertisement clearly presented the suggested dosage of the product concerned, there was no evidence suggesting that the advertisement encouraged excessive use of medical preparation.

### **Decision**

In view of the above, the CA considered that the complaint in respect of sales promotion in advertisement for medical preparation was justified. Having taken into account the specific facts, the circumstances of the case and other relevant factors, the CA decided that TVB should be **advised** to observe more closely the relevant provision of the TV Advertising Code.

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### **Case 2 – Television Programme “Phoenix Morning Express” (鳳凰早班車) broadcast from 8:30am to 9:00am, 6 January 2024 on Phoenix Chinese Channel and Phoenix InfoNews Channel of Phoenix Satellite Television Company Limited (Phoenix TV)**

A member of the public complained that the depiction of the so-called “Flag of the Republic of China” in a news item covering the 2024 Taiwan leadership election (the Election) undermined China’s national sovereignty and territorial integrity.

### **The Communications Authority (CA)’s Findings**

In line with the established practice, the CA considered the complaint case and the representations of Phoenix TV in detail. The CA took into account the relevant aspects of the case, including the following –

### *Details of the Case*

- (a) the programme under complaint was broadcast by Phoenix TV under its non-domestic television programme service licence with its service primarily not targeting Hong Kong. The news programme reported a campaign rally held by a candidate for the Election. The “blue sky, white sun, and a wholly red earth” flags were visible during the rally footage, which was sourced from a Taiwanese news agency. Phoenix TV digitally obscured some of the materials depicted in the same footage; and
- (b) Phoenix TV submitted, among others, that the primary objective of the news item was to inform viewers of the Election, which was a major news event. Phoenix TV attempted to employ computer effects to mask parts of the materials contained in the footage.

### *Relevant Provision in the Generic Code of Practice on Television Programme Standards*

- (a) Paragraph 3 of Chapter 3 – licensees shall not broadcast any programmes that have the effect or likely effect of, among others, inciting any act or activity endangering national security or otherwise contain any contents which are contrary to the interests of national security.

### **The CA’s Consideration**

The CA, having regard to the relevant facts of the case including the information submitted by Phoenix TV, considered that –

- (a) there was a need for Phoenix TV to strike a balance in the news report between the necessity for factual and objective reporting to adequately inform viewers of the Election and the need for caution in presenting materials to avoid giving the wrong impression that Taiwan was a sovereign state. On balance, the overall display of the materials concerned was contextually justified for factual reporting;
- (b) the language used throughout the broadcast was factual and neutral without provocative or biased rhetoric. Nor did the report endorse or influence viewers towards any particular political stance; and
- (c) there was no compelling evidence to suggest that the programme under complaint was in breach of the relevant provision.

### **Decision**

In view of the above, the CA considered the complaint **unsubstantiated**.

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## Appendix

### Review of the Director-General of Communications' Decisions on Complaint Cases by the Communications Authority

<b>Title</b>	<b>Broadcast Channel</b>	<b>Broadcast Date</b>	<b>Substance of Complaint</b>	<b>Decisions Upheld</b>
Radio Programme "Tea for You" (杏林茶)	CR 1	25.3.2024	Inappropriate Content	Unsubstantiated
TV Programme "News Report" (新聞報道)	TVB News Channel	19.5.2024	Disgusting Material	Unsubstantiated